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IN THE

Supreme Court of the United States

October Term 1974

No. 74-133

MARCUS MORALES CALDERON,
Petitioner,

vs.

BOARD OF EDUCATION OF THE EL MONTE SCHOOL DISTRICT OF LOS ANGELES COUNTY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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WESTERN PRINTING COMPANY, WESTWOOD—ORDER 0-1755

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QUESTIONS PRESENTED

1. Has a state statute been drawn in question on the ground of its being repugnant to the United States Constitution, or has any right or privilege been specially set up under the United States Constitution so as to invoke this Court's jurisdiction under Title 28, United States Code, § 1257(3)?

2. Has a federal question of substance been decided so as to cause this Court to exercise its discretion to review this case under its Rule 19(1)(a)?

STATEMENT OF THE CASE

On May 6, 1970, petitioner was arrested for violation of Penal Code Section 288a (oral copulation).

On March 9, 1971, the Governing Board informed him that pursuant to Education Code Section 13443, it had decided not to re-employ him for the next school year (1971-72) on the ground of immoral conduct. Petitioner thereupon demanded the hearing before the Board to which he was entitled. (§ 13443, then subdivision (c) — now subdivision (d).)

On April 16, 1971, the Board through a hearing officer, held a hearing to determine the propriety of its refusal to re-employ petitioner for the coming school year. Following the hearing, the hearing officer found that petitioner had "engaged in sexual conduct with an adult male that was lewd, indecent, and dissolute," and that the conduct involved moral turpitude. The hearing officer concluded that the conduct related to the welfare of the schools and the pupils thereof. The Board adopted this decision as its own. Petitioner then initiated a mandamus proceeding in the Superior Court pursuant to the provisions of California Code of Civil Procedure 1094.5.

On August 30, 1971, the Court denied his petition.

Subsequent to the denial of that petition, the petitioner timely filed a Notice of Appeal in the Court of Appeal. The Court of Appeal affirmed the judgment of the trial court in a unanimous decision in 2d

Civil No. 40727. The petitioner thereupon filed a Petition for Hearing in the California Supreme Court which was denied by the California Supreme Court on July 9, 1974. From that denial, petitioner filed the present petition for writ of certiorari with your Honorable Court.

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED.

Not only is there no *substantial* federal issue in this case, there is simply no federal or constitutional issue at all.

Respondent, a probationary teacher, was not re-employed by the respondent district for the 1971-72 school year because he engaged in an act of immoral conduct which involved moral turpitude.

California statutory law provided that a governing board's decision not to re-employ a probationary teacher for the ensuing school year could be for cause only, and such cause had to relate solely to the welfare of the schools and the pupils thereof. The Superior Court, as well as the Court of Appeal, found that immoral conduct is cause and grounds for non-re-employment under Education Code Section 13443.

There can be no doubt that the scope of the decision of the Court of Appeal rested entirely on statutory grounds. Justice Colby's opinion which is before the court applies the facts of the situation to the provisions

of Education Code Section 13443 and contends that the Governing Board is authorized to not re-employ the petitioner for the 1971-72 school year.

In addition thereto, the issue which the petitioner raises in his petition for writ of certiorari is moot in that the United States Supreme Court in the matter of *Calderon v. Board of Education of El Monte School District of Los Angeles County,* U.S. Supreme Court No. 73-1615, rejected the appeal and treating it as a writ of certiorari, declined to hear the issue. Because of the United States Supreme Court's actions in that matter, even if all of the relief asked for in the present petition were granted, the petitioner would not be entitled to re-employment and as such the present matter is moot.

CONCLUSION

In sum, there is simply no federal or constitutional question to review and that even if there were, the issues presented in this petition are moot.

Respectfully submitted,

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